

CHAPTER NO. 385

HOUSE BILL NO. 1116

By Representatives McAfee, Ford

Substituted for: Senate Bill No. 1600

By Senators Williams, Elsea

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 131, Part 4 relative to providing necessary authority for a lead-based paint program.

WHEREAS, The General Assembly adopted lead-based paint legislation in 1997; and

WHEREAS, it is the intent of the General Assembly that Tennessee have a lead-based paint program that meets the federal requirements for such a program; and

WHEREAS, the Environmental Protection Agency has informed the State that the existing statute does not have the necessary authority for such a program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 131, Part 4, is amended by adding Sections 2 through 4 as appropriately designated sections and re-designating the existing sections as necessary.

SECTION 2. Inspections. (a) The commissioner and his designated staff shall have the authority to enter the business premises of persons and firms certified to engage in lead-based paint activities during business hours upon presenting credentials identifying themselves as employees of the department.

(b) The commissioner and his designated staff shall have the authority to enter any structure, including residences, where lead-based paint activities have occurred, or are being conducted, for the purpose of determining compliance with lead-based paint abatement requirements, provided they either:

(1) obtain the consent of the owner or an adult occupant of the premises after presenting credentials identifying themselves as employees of the department; or

(2) apply for and obtain a warrant from a court with jurisdiction which shall be issued by the court upon a showing of probable cause that the inhabitants of the dwelling are likely to suffer adverse health effects from continued exposure to a lead-based paint hazard.

SECTION 3. Unlawful Acts. (a) On and after the effective date of regulations promulgated by the commissioner pursuant to this chapter, no person shall perform or represent that such person is qualified to perform any lead-based paint activities without having received the appropriate certification from the department unless such person is:

(1) An owner performing abatement upon that person's own residential property;

(2) An employee of a property management company doing routine cleaning and repainting upon property managed by that company where there is insignificant damage to, wear of, or corrosion of existing lead-containing paint or coating substances; or

(3) An owner routinely cleaning or repainting his or her property where there is insignificant damage to, wear of, or corrosion of existing lead-containing paint or coating substances.

"Lead based paint activities" as used in this part has the same meaning as in the rules promulgated and hereafter amended by the U.S. E.P.A. for the federal lead-based paint program under the Toxic Substances Control Act, as amended, 15 U.S.C. §§2601 et seq. This includes lead-based paint inspection, risk assessment, and abatement activities, but does not include renovation, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards, but instead are designed to repair, restore or remodel a structure even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(b) Failure of a lead-based paint abatement contractor to conduct lead-based paint activities in accordance with the requirements of the rules promulgated pursuant to this chapter is unlawful.

(c) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports required by the rules promulgated under this chapter is unlawful.

(d) Failure or refusal to permit entry or inspection as required by Section 2 of this act is unlawful.

SECTION 4. Penalties. (a) (1) Any person who violates any provision of Section 3 of this Act or the rules promulgated pursuant to this Chapter is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs.

(2) A civil penalty may be assessed and enforced in the following manner:

(A) The commissioner may issue a civil penalty assessment against any person responsible for the violation;

(B) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing in the matter involved. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment; the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(D) In lieu of the administrative assessment procedure described above, the commissioner may also institute proceedings for assessment of a civil

penalty in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation occurred.

(E) In assessing the civil penalty, the commissioner may consider the following factors:

(i) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(ii) The potential or actual harm posed to people or the environment by the violation;

(iii) The cause of the violation;

(iv) The effectiveness of action taken by the violator to cease the violation; and

(v) The economic benefit gained by the violator.

(F) All such civil penalties shall be deposited into a subaccount in the fund created by Tennessee Code Annotated, § 68-203-101 and treated accordingly.

(b) The commissioner may suspend or revoke a certification or accreditation for any person who violates any provision of this Act or the rules promulgated pursuant to this Chapter, in accordance with the procedures set forth in Tennessee Code Annotated, § 4-5-320.

(c) Any person knowingly failing, neglecting, or refusing to comply with any of the provisions of Section 3 of this Act, commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.

SECTION 5. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 1999


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 14th day of June 1999


DON SUNDQUIST, GOVERNOR